

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Peter Mwithiga,

Plaintiff,

vs.

Officer J Pierce, et al.,

Defendant.

Case No. 2:23-cv-01330-GMN-VCF

ORDER

APPLICATION TO PROCEED IN FORMA PAUPERIS
(EFC No. 2)

Pro se plaintiff Peter Mwithiga filed an application to proceed in forma pauperis (IFP) and complaint. ECF No. 2. I deny Mwithiga's IFP application.

DISCUSSION

Under 28 U.S.C. § 1915(a)(1), a plaintiff may bring a civil action "without prepayment of fees or security thereof" if the plaintiff submits a financial affidavit that demonstrates the plaintiff "is unable to pay such fees or give security therefor." The Ninth Circuit has recognized that "there is no formula set forth by statute, regulation, or case law to determine when someone is poor enough to earn IFP status." *Escobedo v. Applebees*, 787 F.3d 1226, 1235 (9th Cir. 2015). An applicant need not be destitute to qualify for a waiver of costs and fees but he must demonstrate that because of his poverty he cannot pay those costs and still provide himself with the necessities of life. *Adkins v. E.I DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948).

The applicant's affidavit must state the facts regarding the individual's poverty "with some particularity, definiteness and certainty." *United States v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981) (citation omitted). If an individual is unable or unwilling to verify his or her poverty, district courts have the discretion to make a factual inquiry into a plaintiff's financial status and to deny a request to proceed

1 in forma pauperis. See, e.g., *Marin v. Hahn*, 271 Fed.Appx. 578 (9th Cir. 2008) (finding that the district
 2 court did not abuse its discretion by denying the plaintiff's request to proceed IFP because he "failed to
 3 verify his poverty adequately"). "Such affidavit must include a complete statement of the plaintiff's
 4 personal assets." *Harper v. San Diego City Admin. Bldg.*, No. 16cv00768 AJB (BLM), 2016 U.S. Dist.
 5 LEXIS 192145, at 1 (S.D. Cal. June 9, 2016). Misrepresentation of assets is sufficient grounds in
 6 themselves for denying an in forma pauperis application. *Cf. Kennedy v. Huibregtse*, 831 F.3d 441, 443-
 7 44 (7th Cir. 2016) (affirming dismissal with prejudice after litigant misrepresented assets on in forma
 8 pauperis application).

9 The District of Nevada has adopted three types of IFP applications: a "Prisoner Form" for
 10 incarcerated persons and a "Short Form" (AO 240) and "Long Form" (AO 239) for non-incarcerated
 11 persons. The Long Form requires more detailed information than the Short Form. The court typically
 12 does not order an applicant to submit the Long Form unless the Short Form is inadequate, or it appears
 13 that the plaintiff is concealing information about his income for determining whether the applicant
 14 qualifies for IFP status. When an applicant is specifically ordered to submit the Long Form, the correct
 15 form must be submitted, and the applicant must provide all the information requested in the Long Form
 16 so that the court is able to make a fact finding regarding the applicant's financial status. See *e.g. Greco v.*
 17 *NYE Cty. Dist. Jude Robert Lane*, No. 215CV01370MMDPAL, 2016 WL 7493981, at 3 (D. Nev. Nov.
 18 9, 2016), report and recommendation adopted sub nom. *Greco v. Lake*, No. 215CV001370MMDPAL,
 19 2016 WL 7493963 (D. Nev. Dec. 30, 2016). Federal Rules of Civil Procedure Rule 10(a) commands that
 21 the title of every complaint must name all the parties. "The normal presumption in litigation is that
 22 parties must use their real names." *Doe v. Kamehameha Sch./Bernice Pauahi Bishop Est.*, 596 F.3d
 23 1036, 1042 (9th Cir. 2010).

24 Mwithiga filled out the long form: he states that he makes \$1,848 per month in income, \$500 a
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1 month in self-employment, but that he has \$16,659 a month in total expenses. ECF No. 2. Plaintiff does
2 not properly itemize how he has so many thousands of dollars in expenses, or how he pays the thousands
3 of dollars in expenses. He states that he has \$480 in regular expenses for the operation of a business,
4 profession, or farm. The question asks that he attach a detailed statement regarding his personal business
5 expenses, which he does not do. I find that plaintiff's IFP application is incomplete, so I cannot
6 determine if plaintiff qualifies for IFP status.

7 I will allow plaintiff another opportunity to show that he qualifies for IFP status. Plaintiff must
8 again fill out the long form application. Plaintiff must provide an attachment that details his business
9 expenses, details his \$16,659 a month in expenses, and how he pays over \$16,659 a month in expenses.
10 Plaintiff must answer all questions on the long form, and he cannot leave any questions blank.

11 ACCORDINGLY,

12 I ORDER that plaintiff Mwithiga's application to proceed in forma pauperis (ECF No. 2) is
13 DENIED WITHOUT PREJUDICE.

14 I FURTHER ORDER that by Friday, October 13, 2023, plaintiff Mwithiga must either (1) file
15 the long form application to proceed in forma pauperis as specified in my order or (2) plaintiff must pay
16 the full fee for filing a civil action.

17 I FURTHER ORDER that failure to timely comply with this Order may result in a
18 recommendation that this case be dismissed with prejudice.

19 **NOTICE**


20 Pursuant to Local Rules IB 3-1 and IB 3-2, a party may object to orders and reports and
21 recommendations issued by the magistrate judge. Objections must be in writing and filed with the Clerk
22 of the Court within fourteen days. LR IB 3-1, 3-2. The Supreme Court has held that the courts of appeal
23 may determine that an appeal has been waived due to the failure to file objections within the specified
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1 time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file
2 objections within the specified time and (2) failure to properly address and brief the objectionable issues
3 waives the right to appeal the District Court's order and/or appeal factual issues from the order of the
4 District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch.*
5 *Dist.*, 708 F.2d 452, 454 (9th Cir. 1983). Pursuant to LR IA 3-1, plaintiffs must immediately file written
6 notification with the court of any change of address. The notification must include proof of service upon
7 each opposing party's attorney, or upon the opposing party if the party is unrepresented by counsel.

8 **Failure to comply with this rule may result in dismissal of the action.**

9 IT IS SO ORDERED.

10 DATED this 13th day of September 2023.

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12 CAM FERENBACH
13 UNITED STATES MAGISTRATE JUDGE
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